

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MELVIN WILLIAMS,

Plaintiff,

v.

SOTO, et al.,

Defendants.

Case No. 1:23-cv-00547-EPG (PC)

ORDER DENYING PLAINTIFF'S  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS, WITHOUT PREJUDICE

(ECF No. 2)

ORDER DIRECTING PLAINTIFF TO  
SUBMIT APPLICATION TO PROCEED IN  
FORMA PAUPERIS OR PAY FILING FEE  
WITHIN 30 DAYS

ORDER DIRECTING CLERK TO SEND  
PLAINTIFF A BLANK APPLICATION TO  
PROCEED IN FORMA PAUPERIS

Plaintiff is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On April 7, 2023, Plaintiff filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, along with a Trust Account Statement. (ECF No. 2). According to Plaintiff's application, he is not employed, he has not received money from any sources in the last twelve months, and he has no money or other assets. However, according to the attached Trust Account Statement, between October 7, 2022, and April 7, 2023, Plaintiff received \$3,735.56 in deposits to his Trust Account.

"Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that ... the allegation of poverty is untrue." 28 U.S.C § 1915(e)(2)(A). Additionally, "courts routinely dismiss with prejudice cases

upon finding that the plaintiff has intentionally withheld information that may have disqualified plaintiff from obtaining IFP status or has otherwise manipulated his finances to make it appear that a plaintiff is poorer than he actually is; i.e., where the facts show that the inaccuracy on the IFP application resulted from the plaintiff's bad faith." Witkin v. Lee, 2020 WL 2512383, at \*3 (E.D. Cal. May 15, 2020), report and recommendation adopted, 2020 WL 4350094 (E.D. Cal. July 29, 2020), appeal dismissed, 2020 WL 8212954 (9th Cir. Dec. 9, 2020). See also Steshenko v. Gayrard, 2015 WL 1503651, at \*5 (N.D. Cal. Apr. 1, 2015) ("Where the applicant has knowingly provided inaccurate information on his or her IFP application, the dismissal may be with prejudice.") (citing Thomas v. Gen. Motors Acceptance Corp., 288 F.3d 305, 306 (7th Cir. 2002); Attwood v. Singletary, 105 F.3d 610, 612-13 (11th Cir. 1997); Romesburg v. Trickey, 908 F.2d 258, 260 (8th Cir. 1990); Thompson v. Carlson, 705 F.2d 868, 869 (6th Cir. 1983)), aff'd sub nom. Steshenko v. Albee, 691 F. App'x 869 (9th Cir. 2017).

As of the date of the last transaction in Plaintiff's Trust Account, Plaintiff's account balance was only \$142.82. (ECF No. 2, p. 6). However, as discussed above, between October 7, 2022, and April 7, 2023, Plaintiff received \$3,735.56 in deposits to his Trust Account. Plaintiff provides no explanation of these deposits in his application. As the evidence before the Court of Plaintiff's assets is inconclusive, the Court will deny Plaintiff's application without prejudice and provide Plaintiff with an opportunity to clarify his financial condition and adequately demonstrate financial hardship.<sup>1</sup> As Plaintiff is receiving money but swears under penalty of perjury that he is not, the Court also warns Plaintiff that knowingly providing inaccurate information on the application may result in dismissal of the action with prejudice.

Accordingly, IT IS ORDERED that:

1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 2) is denied without prejudice;
2. Within thirty (30) days from the date of service of this order, Plaintiff shall submit the attached application to proceed *in forma pauperis*, completed and signed, or in

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<sup>1</sup> In his application, Plaintiff also states: "Full check payment to follow \$450.00." (ECF No. 2, p. 1). The Court notes that, if Plaintiff pays the filing fee in full, he does not need to submit another application to proceed *in forma pauperis*. The Court also notes that the filing fee is \$402, not \$450.

the alternative, pay the \$402.00 filing fee for this action;

3. Failure to comply with this order may result in dismissal of this action; and

4. The Clerk of Court is directed to send Plaintiff a blank application to proceed *in forma pauperis*.

IT IS SO ORDERED.

Dated: April 10, 2023

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE